

EXHIBIT A

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Corrections and Rehabilitation ("CDCR") and James
8 Grove

**FEE EXEMPT
GOVERNMENT CODE § 6103**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN BERNARDINO**

12 AUGUSTINE CALDERA,

13 Plaintiff,

14 v.

15 STATE OF CALIFORNIA; CALIFORNIA
16 DEPARTMENT OF CORRECTIONS AND
REHABILITATION; JAMES GROVE; and
17 DOES 1 to 100, Inclusive,

18 Defendants.

Case No. CIVDS100177

Hon. Gilbert G. Ochoa, Dept. S24

**DECLARATION OF JAMES P. SCHRATZ
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S MOTION
FOR ATTORNEYS' FEES**

Date: October 16, 2020

Time: 9:00 a.m.

Dept.: S24

Action Filed: January 8, 2010

Trial Date: September 8, 2015

21 I, JAMES P. SCHRATZ, hereby declare:

22 **EXECUTIVE SUMMARY**

23 The following summarizes my findings set forth in this declaration:

24 I was asked to provide my opinion on what Plaintiff's Attorneys' reasonable hourly rates
25 should be and what an appropriate multiplier would be in this case.

26 Based upon relevant cases and other relevant data, it is my opinion that the hourly rate for
27 Mr. Nevell and Mr. Sheldon should be no higher than \$650. Even though their earlier work could
28

1 52. Mr. Nevell is a 1994 admittee to the Bar. (Declaration of Todd F. Nevell (“Nevell
2 Declaration” or “Nevell Decl.”), ¶ 3 at p. 1: 15.) His declaration references only one case in which
3 he has been awarded attorney fees at \$750 per hour: *Pearl v. City of Los Angeles* (Nevell Decl.,
4 ¶ 4 at p. 2:5-6.)

5 53. In that FEHA discrimination case, a jury awarded \$17.4 million in damages.
6 Defendant filed a motion for new trial, which the court conditionally granted, unless plaintiff
7 accepted a remittitur to \$12.4 million. Plaintiff accepted the remittitur and the motion for new trial
8 was denied. Thereafter a motion for attorneys’ fees was filed and opposed. The court awarded fees
9 at \$750 per hour although the basis for that decision was not discussed in the order.

10 54. Mr. Nevell states that he has been awarded this rate in other FEHA cases. (Nevell
11 Decl., ¶ 40.) However, he does not list these cases.

12 55. In addition, Mr. Nevell is seeking a rate of \$825 per hour for work from 2018 to the
13 present. This is an increase of $(825 - 750)/750$, or $75/750$, or 10 percent.

14 56. In the auditor’s experience, a 4 percent annual rate increase is a typical benchmark.
15 This is also evidenced by recent articles attesting to this 4 percent annual increase.² In contrast, in
16 slightly over one year, Mr. Nevell is requesting a ten percent increase in his rate. This is an
17 excessive rate increase.

18 **2. Insufficient Documentation of Reasonableness of Requested Rates.**

19 57. The fee applicant must “produce satisfactory evidence — in addition to the
20 attorney’s own affidavits — that the requested rates are in line with those prevailing in the
21 community.” *Dang v. Cross* 422 F.3d 800, 814 (9th Cir. 2005). Plaintiff’s Attorneys have not done
22 so in this instance.

23 58. Plaintiff’s Attorneys state that in a case heard on the same day, in the same
24 courtroom, before the same judge as the original motion for fees was heard in this case, the court

25 ² <<https://abovethelaw.com/2019/11/just-because-billing-rates-are-up-doesnt-mean-bonuses-will-follow/>>,
26 last visited December 22, 2019. A true and correct copy of this article is attached as **Exhibit 7**. The article refers to a 4
27 percent rate increase. See also <<https://www.law.com/americanlawyer/2018/02/21/sorry-clients-higher-law-firm-billing-rates-really-do-pay-off/>>,
28 last visited December 22, 2019. A true and correct copy of this article is attached as **Exhibit 8**. The article states “Top-performing firms increased their rates at an average annual rate of 4.4 percent, compared with an increase of 3.3 percent for the broader sample”